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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/552,225
Filing Date: October 06, 2005
Appellant(s): VOIGT ET AL.

Michael J. Striker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 13 August 2008 appealing from the Office action mailed 2 May 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Whether claims 15-26 and 28-30 are anticipated under 35 U.S.C. 102(b) by EP 0 973 353 to Rudolf ("Rudolf '353").

Whether claims 24, 25 and 27 are anticipated under 35 U.S.C. 102(b) by U.S. Patent No. 4,924,635 to Rudolf et al ("Rudolf '635").

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP 0 973 353	RUDOLF et al	9-2000
4,924,635	RUDOLF et al	5-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 15-26 and 28-30 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rudolf et al (EP 0 973 353). Rudolf et al discloses a system comprising a guard 14, a power tool 10, a rotation-prevention means comprising a blocking means 31 on a guard side and a stop means 32 on a power tool side, an attachment means 17 for clamping the guard 14 to the power tool 10, wherein the stop means 32 limits rotation of the guard 14, wherein the rotation of the guard is independent of a tightening torque to attached the guard 14, wherein the rotation-prevention means limits rotation of the guard 14 to a narrow angular range or entirely prevents rotation of the guard 14, wherein the guard 14 can be fixed to any position in a limiting groove 32, wherein the a collar 12 includes an insertion groove 34 with a limiting groove 32 located at an angle (note Fig. 1-5, paragraph [0035] through [0045]).

Claims 24, 25 and 27 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rudolf et al (USPN 4,924,635). Rudolf et al discloses a power tool 1 with motor located in housing 3 for driving an insertion tool 6, a rotation-preventing means for preventing the insertion tool from being released in a direction of an operator, the rotation-prevention means including a stop means 30 for a blocking means 31, wherein

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the stop means projects outward at an angle from the housing 3 (note Fig. 1-2, col. 4, lines 29-60).

(10) Response to Argument

Appellant has argued that the elements disclosed in Rudolf '353 differ markedly in function than the elements of the present invention, the present invention comprises a system which provides a safety mechanism in form of a guard to perform a force rotation in the event of an accidental shattering or bursting of an insertion tool during operation mode of the power tool. The argument is not persuasive because Rudolf '353 discloses all the structure limitations of the claimed invention including a guard 14, a power tool 11, a blocking means 31, a stop means 32, an attached means 17 for clamping the guard 14 to the power tool 11, the guard 14 attached to a collar 12 (note Fig. 1-4). Therefore, the claims are anticipated by Rudolf '353 because the same structural limitations are capable of performing the same functions recited in the claims. MPEP 2114 states that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structure limitations of the claim.

Appellant has argued that the barrier 31 of Rudolf '353 is embodied as an extension of part 15 of the guard 14, and is constructed as a thin layer and not intended to sustain high forces. The argument is not persuasive because the limitation of sustain high forces are not recited in the rejected claims.

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Appellant has argued that Rudolf '635 reference fails to disclose any mechanism which provides a security mechanism in the form of rotation-prevention means to prevent the insertion tool from being released in the direction of an operator. The argument is not persuasive because Rudolf '635, Fig. 1-2, column 4, lines 29-60, shows a security mechanism 8 in the form of rotation-prevention means including a stop means 30 and blocking means 31 to prevent the insertion tool 6 from being release in the direction of an user (note Fig. 1 and 2).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Dung Van Nguyen/

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